

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 06-0408
Use Tax
For 2003, 2004, and 2005

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

I. Use Tax – Unitary Transaction: Postage.

Authority: IC § 6-2.5-1-1(a); IC § 6-2.5-1-2(b); IC § 6-2.5-2-1; IC § 6-2.5-4-1(b); 45 IAC 2.2-1-1(a).

Taxpayer protests the imposition of use tax on that portion of taxpayer's invoices purportedly attributable to postage charges.

II. Ten-Percent Negligence Penalty.

Authority: IC § 6-8.1-5-1(b); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(a)(4); IC § 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer seeks abatement of the ten-percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an automobile dealer that contracts with out of state customers to provide mailings and whose invoices allegedly contain charges for postage. The Department of Revenue (Department) conducted an audit of taxpayer's records for 2003, 2004, and 2005 and concluded that taxpayer should have paid use tax on the invoice totals. Taxpayer disagreed, submitted a protest, an administrative hearing was conducted, and this Letter of Findings results.

I. Use Tax – Unitary Transaction: Postage.

DISCUSSION

Taxpayer protests the assessment of use tax on that portion of taxpayer's invoices purportedly attributable to the cost of postages. Taxpayer maintains that its invoices improperly included charges for postage. The Department disagreed and proposed an additional assessment on that portion of the taxpayer's invoices for which sales tax had not been collected or remitted. The audit determined that taxpayer's invoices represented a combined lump sum charge and should be interpreted and assessed as a unitary transaction.

Under IC § 6-2.5-2-1, the state imposes a state gross retail tax on retail transactions made in Indiana. A retail transaction, the prerequisite to the imposition of the tax, is the transfer, in the ordinary course of business, of tangible personal property for consideration. IC § 6-2.5-4-1(b).

However, the transfer of services is taxed if it is part of a retail “unitary transaction.” IC § 6-2.5-1-2(b). A retail “unitary transaction” is one in which items of personal property and services are furnished under a single order or agreement and for which a total combined charge or price is calculated. IC § 6-2.5-1-1(a). A unitary transaction includes all items of property and services for which a total combined selling price is computed irrespective of the fact that the cost of services, which would not otherwise be taxable, is included in the selling price. 45 IAC 2.2-1-1(a).

At the hearing, the taxpayer produced sample invoices demonstrating the manner in which it was billed. A typical invoice stated the cost of the various items for which the taxpayer was being charged. This list according to the taxpayer included postage.

The evidence presented by the taxpayer demonstrates that taxpayer’s invoices do represent unitary transactions which would subject the whole amount to Indiana use tax.

FINDING

Taxpayer’s protest is denied.

II. Ten-Percent Negligence Penalty.

DISCUSSION

Taxpayer believes that it is entitled to abatement of the ten-percent negligence penalty.

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer’s negligence. IC § 6-8.1-10-2.1(a)(4) requires a ten-percent penalty if the taxpayer “fails to pay the full amount of tax shown on the person’s return on or before the due date for the return or payment.”

IC § 6-8.1-10-2.1(d) states that, “If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person’s return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty.”

Departmental regulation 45 IAC 15-11-2(b) defines negligence as “the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.” Negligence is to “be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.” Id.

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on “reasonable cause and not due to willful

neglect.” Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish “reasonable cause,” the taxpayer must demonstrate that it “exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed”

Under IC § 6-8.1-5-1(b), “The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” An assessment – including the negligence penalty – is presumptively valid.

Taxpayer has provided substantive evidence in support of its protest. The Department agrees that the evidence provided supports the contention that, in failing to pay use tax, taxpayer acted as “an ordinary reasonable taxpayer.”

FINDING

Taxpayer’s protest is sustained.

BK/JR/DK – April 24, 2007.